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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

SAM SKURNICK,
Petitioner,

v.

MARTIN RAAKE,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, #6030
Boca Raton, Florida 33432
(561) 391-3255

April 19, 1999

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QUESTIONS PRESENTED

1. May a Court of Appeals, without a hearing, dismiss an appeal from a District Court's order when the appeal was timely filed and the required fee paid?

2. May a District Court issue a judgment against an individual without a hearing?

3. May a District Court make an award to a Plaintiff for parties that did not participate in the suit?

LIST OF PARTIES

The caption of the case contains the names of all the parties.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	7
APPENDIX:	
Petition(s) for Rehearing and Suggestion of Rehearing En Banc Denied by C. of A. January 19, 1999	1a
Motion to dismiss appeal Granted by C. of A.	2a
Objections to Motion To Dismiss Appeal by C. of A.	3a
Order of Reference of Motion To Schedule Contempt Hearing's To Magistrate Judge by District Court	6a
Order For Coontempt Hearing by District Court..	7a
Order To Show Cause by District Court	8a
Order Denying Motion for stay of Judgment Pending Appeal by District Court	9a
Final Judgment by District Court	10a
Motion for Order and Judgment on Motion by Plaintiff Granted by District Court	12a
Suggestion of Hearing En Banc filed by Appellants in the Eleventh Circuit Court of Appeals	14a

TABLE OF AUTHORITIES

CASES

First Options of Chicago, Inc. v. Manual Kaplan, Case No. 94-0560, Decided May 22, 1995, United States Supreme Court (9FLA.L.Weekly Fed. S65)	5

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---

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Eleventh Circuit Court of Appeals dismissed my appeal without offering a reason. My suggestion of Hearing En Banc was denied on January 19, 1999 after circulation through the Court with no member voting for its approval. (See Appendix, pp. 1a and 2a.)

The District Court issued its final judgment without ordering a hearing and without rendering an opinion other than saying, "The Court has considered the issues, the pertinent portions of the record, and is otherwise fully advised on the premises." This Final Judgment was filed

on March 23, 1998. (See Appendix, pp. 10a-11a) My Notice of Appeal was filed on April 20, 1998.

JURISDICTION

The Eleventh Circuit Court of Appeals denied my suggestion of Hearing En Banc on January 19, 1999. According to Eleventh Circuit rules a suggestion for Hearing En Banc is treated as a petition for rehearing.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit Court of Appeals is believed to be 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

In 1986 I was served with a verified complaint filed by Lloyd and Martin Raake, two brothers whose stock accounts I managed. Despite the fact that both accounts were profitable, and in the case of Lloyd Raake, very profitable, they were induced by Russell L. Forkey, a Florida lawyer, to take advantage of a Florida law that permitted gains to be kept and losses to be repaid by brokers who were not registered in Florida. Lloyd Raake invested a total of $40,000 which grew to $105,000 at the time he terminated his account. He was however at all times a resident of the State of Ohio during the time I handled his account. Mr. Forkey persuaded both brothers to swear that Lloyd Raake was a resident of the State of Florida. The complaint alleged 98 instances of fraud, deceit and misrepresentations on my part, as well as not following instructions they gave me. All of their claims were based upon fictitious conversations that never took place. I had documentary evidence to prove that many of their claims were false. My New York attorney recommended that I take the case to arbitration inasmuch as

our agreement included an arbitration clause. The District Court, Judge Zloch, ordered the case to arbitration which Mr. Forkey appealed to the Eleventh Circuit Court of Appeals on the grounds that the Security Act of 1933 negated such arbitration clauses. The claim was fraudulent because the 1933 Act dealt solely with new issues while every stock I purchased on a discretionary basis for the Raake brothers was listed on The New York Stock Exchange. His appeal was dismissed and I was awarded costs which to this day have not been paid.

Sometime later I received a notice from the AAA that the Raake brothers had requested arbitration of their claims against me. The claim was not signed by either of the Raake brothers according to the rules of the AAA at that time. I called Martin Raake and advised him of the arbitration request attributed to him. His reply was that he was unware of such proceeding and that he had not authorized anyone to act on his behalf.

I learned that Mr. Forkey and the director of the Miami office of the AAA were colleagues in an arbitration school. Because of many irregularities in the arbitration proceedings, I believe that the head of the Miami AAA office collaborated to fix the arbitration proceedings against me. Examples are designating the Miami region for arbitration proceedings where Mr. Forkey was familiar with those chosen to arbitrate disputes. He could pick arbitrators favoring him in the past. The list of arbitrators submitted to me consisted of at least three individuals who had worked for him in his office. They did not inform me of arbitrators who had served on arbitrational tribunals on cases in which Mr. Forkey was involved, and many other signs that the cards were being stacked against me. They did not follow their own rules, especially the ones that required me to be informed in writing that they demanded

arbitration or disclose to me in writing their designated representatives.

I informed them that I did not recognize the authority of the chosen arbitrators until there was a written demand presented to me by the plaintiffs.

The arbitrators met and rendered a decision which was in accordance with Florida law. Mr. Forkey's Ohio client Lloyd Raake was awarded nothing. Mr. Forkey claimed the arbitration decision should be overthrown because it was arbitrary and capricious. The magistrate acting on behalf of the Court recommended that the Court throw out his nothing award on the basis Mr. Forkey recommended. The District Court, Judge Gerald Graham, accepted the magistrate recommendation. I appealed his decision. The Court of Appeals restored the original decision of the arbitrators whose authority I never recognized. The Court made awards to Martin Raake on behalf of the AAA even though I had settled any claims they had made against me.

The District Court did not conduct a hearing on Mr. Forkey's claims.

I filed a timely notice of appeal, paid the required fee, and five times made written offers to put up any cash deposit the Court felt was appropriate to protect the interests of the Plaintiff pending the outcome of my appeal. A check I deposited with the District Court clerk for the full amount of the judgment plus 10% interest was returned to me. I am now being cited for contempt of court and being threatened with being sentenced to jail for exerting my law given rights to appeal to the courts for justice. That is the situation as I write this appeal.

REASONS FOR GRANTING THE WRIT

1. I believe this case is governed by the Supreme Court decision in the case of *First Options, Inc. vs. Manual Kaplan*, U.S. Supreme Court Case No. 94-0560, Decided May 22, 1995. Kaplan raised the question of arbitrability. He did not recognize the authority of the arbitrators. The decision of the U.S. Supreme Court states:

> "If . . . the parties did not agree to submit the arbitrability question to arbitration, then the Court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely independently. These two questions flow inexorably from the fact that arbitration is simply a matter of contract between the parties; it is a way to resolve these disputes that the parties agreed to submit to arbitration."

I believe the other party did not live up to the terms of our arbitration agreement and I was justified in not attending the meeting of the alleged arbitrators. My attendance would have been interpreted as recognizing their legitimacy.

2. The compelling reason for granting the writ is that the judgment was procured because of a fictitious account of more than 98 events, conversations, and representations that never took place, compiled by a lawyer who committed the crime of inducing his clients to swear under oath to their truthfulness. Furthermore, he tricked lower judges to render enormous judgments in his favor as a result of his fraudulent representations and those of his clients who he induced to swear to their truthfulness. He took advantage of the greed of his clients to cause them to become partners in his criminal activities. Not only were his clients partners to his criminal activities, but

he also convinced a naive magistrate and possibly an overworked District Court judge to help him gain the benefits of his criminal activities. The magistrate recommended that the "nothing" award to Lloyd Raake be rescinded because it was arbitrary and capricious even though it conformed 100% to the letter of Florida law. It is the judgment of this same judge I am appealing for a second time.

The oldest well known law is the Ten Commandments. Two of those involve prohibitions against perjury. One which prohibits taking the Lords name in vain, has led to the custom of having witness swear with a hand on a bible. The other commandments says, "Thou shalt not bear false witness." These two commandments illustrate how important it is for courts to demand that sworn statements be truthful. I recognize that it may be impractical to try and punish all parties who commit perjury. However, it is a simple matter for a Court to deprive an individual of the benefits derived from his perjury or inducing others to commit perjury.

I believe based upon the facts I have and am prepared to present to the courts, that the lower courts through negligence or indifference have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for this Court's supervisory power to be exercised.

CONCLUSION

On the basis of the facts here presented and which are also available on demand, the best interests of the Government and the people you represent requires that you grant the Writ.

Respectfully submitted,

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, #6030
Boca Raton, Florida 33432
(561) 391-3255

April 19, 1999

APPENDIX

APPENDIX

APPENDIX

[Filed Jan. 19, 1999]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4685

LLOYD E. RAKKE, MARTIN RAAKE,
Plaintiffs-Appellees,

versus

SAM SKURNICK,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

Before: ANDERSON, EDMONDSON and DUBINA, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
JOEL F. DUBINA
United States Circuit Judge

[Filed Oct. 20, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-04685

LLOYD E. RAKKE, MARTIN RAAKE,
Plaintiffs-Appellees,

versus

SAM SKURNICK,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

BEFORE: ANDERSON, EDMONDSON and DUBINA, Circuit Judges.

BY THE COURT:

Appellee Martin Raake's motion to dismiss this appeal is GRANTED.

Appellant's motion for stay of judgment pending appeal is DENIED AS MOOT.

[Filed Jun. 12, 1998]

11TH CIRCUIT COURT OF APPEALS

Case No: 98-4685
LT Case No: 86-6772-GRAHAM

SAM SKURNICK,

Appellant

v.

MARTIN RAAKE

Appellee

OBJECTION TO APPELLEE'S MOTION TO DISMISS APPEAL

Sam Skurnick, Pro Se, in the matter of Skurnick v Raake, responds to Appellee's *Motion to Dismiss Appeal and Memorandum of Law in Support Thereof.*

Argument

1. Appellant has filed his appeal permitted by right of law by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4 and paid the clerk the required fee. Appellee's motion to dismiss is in fact, an attempt to deny me my law given right.

Argument

2. Appellee argues that the District Court has a valid basis for his decision to enter his judgment against me. It stands to reason that District Court orders are issued on what appears to be a reasonable basis. If a demonstration that a District Court acted on a reasonable basis was sufficient cause to dismiss an appeal, most appeals

would be dismissed. It is for the Court of Appeals to decide if the appeal has, or does not have, merit. If the appeal is without merit, the Court of Appeals could deny the appeal, and penalize the Appellant with an award of costs to the Appellee.

Argument

3. Appellant, Pro Se, believes that the District Court, that issued the judgment against me no longer had jurisdiction in this case. Appellee filed suit, "In the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County," (case no: CL 96 010907) for $10,000 plus interest, stating that both Martin Raake and Sam Skurnick were residents of Florida. This implies that the Florida Circuit Court had jurisdiction (See Exhibit B—*Complaint* filed December 26, 1996 in the Circuit Court. See Exhibit C, my answer to the complaint. See Exhibit D, *Notice to Set Motion Hearing*).

4. On the day set for the Circuit Court hearing, Plaintiff Martin Raake, moved the Circuit Court for Voluntary Dismissal Without Prejudice. Appellant, Sam Skurnick, objected to the Dismissal Without Prejudice. To this day, appellant has not received any notice from the Circuit Court on the motion to Dismiss Without Prejudice, or on his objection to the Motion.

5. The facts in Paragraphs 3 and 4, above, as well as other facts, cause the appellant to believe that he has valid grounds for his appeal.

6. For the reasons given in the foregoing paragraphs, Appellant requests this Court of Appeals to deny the Appellee's Motion.

SAM SKURNICK
Appellant, Pro Se
300 S.E. 5th Ave. #6030
Boca Raton, FL 33432
Tel: (561) 391-3255

/s/ Sam Skurnick
SAM SKURNICK

[Certificate of Service Omitted]

[Filed Mar. 26, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER OF REFERENCE OF MOTION
TO SCHEDULE CONTEMPT HEARINGS
TO MAGISTRATE JUDGE

THIS CAUSE is before the court *sua sponte*. Pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Southern District of Florida, the above-captioned cause is hereby referred to United States Magistrate Judge Turnoff to conduct a contempt hearing. Magistrate Turnoff shall issue a Report & Recommendation on whether Defendant should be held in contempt of court for failing to comply with this Court's Order dated February 12, 1999.

DONE AND ORDERED IN Chambers at Miami, Florida, this 26th day of March, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Feb. 12, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER

THIS CAUSE came before the Court on Plaintiff's Motion to Hold Defendant in Contempt, filed November 24, 1998.

THE COURT has considered the motion and the pertinent portions of the record, and being otherwise fully advised in the premises. The record shows no evidence of a stay having been granted by any court. Accordingly, it is

ORDERED AND ADJUDGED that the Defendant shall pay the judgment within 10 days of the date of this Order. If the Defendant fails to comply with this Order, the Court SHALL IMMEDIATELY CONDUCT A CONTEMPT HEARING.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Jan. 29, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER TO SHOW CAUSE

THIS CAUSE came before the Court Plaintiff's Motion to Hold Defendant in Contempt, filed November 24, 1998.

On March 23, 1998, this Court entered final judgment against the Defendant, Sam Skurnick in the amount of $25,525.74. Thereafter, the Plaintiff served discovery, in aid of execution, upon Defendant. On May 20, 1998, the Defendant filed a Motion for Protective Order. On June 22, 1998, this Court denied that motion. Defendant has repeatedly failed to appear for depositions in aid of execution. Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiff shall file a response with the Court no later than Friday, February 12, 1999 to show good cause why this Court should not hold him in contempt.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of January, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Jul. 27, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,

Plaintiffs,

vs.

SAM SKURNICK,

Defendant.

ORDER

THIS CAUSE came before the Court upon Defendant's Motion for Stay of Judgment Pending Appeal, filed July 6, 1998.

THE COURT has considered the Motion and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Motion is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 27th day of July, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Mar. 23, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

FINAL JUDGMENT

THIS CAUSE came on for consideration before the Court upon Plaintiff's Motion for Order and Judgment (D.E. 176), filed May 19, 1997.

THE COURT has considered the issues, the pertinent portions of the record, and is otherwise fully advised in the premises. Therefore, it is

ORDERED AND ADJUDGED that Plaintiff is awarded a judgment against Defendant Sam Skurnick in the total amount of $25,525.74, which includes:

(1) The subject award of $10,000.00;

(2) Administrative fees and expenses of the American Arbitration Association totaling $3,000.00;

(3) The award includes $1,800.00 for fees previously paid by the Plaintiff;

(4) The award further includes interest on the balance of $14,800.00, from October 2, 1990 to May 6, 1997, in the amount of $10,725.74.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of March, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Mar. 12, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

THIS CAUSE came before the Court upon Plaintiff's Martin Raake, Motion for Order and Judgment, filed May 19, 1997.

THE COURT has reviewed the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

On June 29, 1993, this Court entered an Order Affirming Magistrate's Report And Recommendation (D.E. 121) and vacated the arbitration award in part and granted damages to Lloyd Raake (or his estate) in the amount of $84,824.77, plus interest, and awarded damages to Martin Raake in the amount of $9,436.16, plus interest. This Court also granted Plaintiffs attorney's fees.

The Eleventh Circuit relied on *Brown v. Rauscher Pierce and Refsnes, Inc.*, 994 F.2d 775 (11th Cir. 1993) and reversed this Court's Order Affirming Magistrate's Report And Recommendation (D.E. 121). The Eleventh Cir-

cuit remanded the case to this Court with instructions to reinstate the award of the arbitrators.

In light of the above, it is

ORDERED AND ADJUDGED that Defendant's Motion for Dismissal of Motion for Order and Judgment filed May 29, 1997 is hereby DENIED. It is further,

ORDERED AND ADJUDGED that Plaintiff's, Martin Raake, Motion for Order and Judgment filed May 19, 1997 is GRANTED. It is further

ORDERED AND ADJUDGED that the Clerk of Court shall REINSTATE the Award of the Arbitrators and AFFIRM the decision of arbitration panel.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 98-4685

SAM SKURNICK,
Defendant-Appellant

vs.

MARTIN RAAKE,
Plaintiff-Appellee.

SUGGESTION OF HEARING EN BANC

On Appeal from the United States District Court
for the Southern District of Florida

DC Dkt No.: 86-06772-CIV-DLG

Submitted by:

SAM SKURNICK, *Pro Se*
Appellant

300 S.E. 5th Avenue
#6030
Boca Raton, FL 33432

Tel: (561) 391-3255

CERTIFICATE OF INTERESTED PERSONS

Pursuant to the Rules of the United States Court of Appeal for the Eleventh Circuit, Rule 28-2(b), the undersigned hereby certifies the following persons or entities have an interest in the outcome of this case.

Honorable Donald L. Graham, United States District Judge for the Southern District of Florida.

Sam Skurnick—Appellant

Martin Raake—Appellee

Russell L. Forkey, P.A.—Counsel for Appellee.

by /s/ Sam Skurnick
SAM SKURNICK

Certification of Appellant Acting PRO-SE

I, SAM SKURNICK, acting Pro Se, express a belief, based on a reasonable and studied judgment, that the panel decision is contrary to the following decision of the Supreme Court of the United States.

Case No. 94-560 First Options of Chicago, Inc. v. Manuel Kaplan.

I express a belief, based on a reasoned and studied judgment, that this appeal involves one or more questions of exceptional importance.

1. May this Court, without a hearing, arbitrarily dismiss an appeal from a judgment issued by a District Court even though the Notice of Appeal was timely filed and the required fee paid?

2. Does this Court wish to use its Government given powers to facilitate Russell L. Forkey to benefit from his criminal activities of inducing individuals to swear to the truth of completely fictitious complaints he prepared for them?

/s/ Sam Skurnick
SAM SKURNICK *Pro Se*

STATEMENT OF THE ISSUES MERITING EN-BANC CONSIDERATION

1. A district court without a hearing rendered a judgment against me based upon an alleged arbitration decision I refused to recognize as valid. I exercised my right to appeal and filed a timely notice and paid the required FRAP 3 fee. I also filed a motion for a stay of the district court's injunction pending the outcome of my appeal. I offered to make a cash deposit with the court for any amount they considered reasonable pending the outcome of my appeal. I conformed with the provisions of FRAP 8(a) and (b). A motion was made to dismiss my appeal. I objected to the motion and gave my reasons. The motion to dismiss was granted and my offer to make a cash deposit that the court deemed appropriate was dismissed as "moot." I feel that my law-given right to appeal a district court's judgment was unjustly denied me, and that this is an issue that merits En-Banc consideration.

2. The American Arbitration Association (AAA) submitted to me an alleged claim for arbitration from Martin Raake. His signature was not on the claim nor was there any notice that he authorized Russell L. Forkey, P.A. to act on his behalf. I called Martin Raake and advised him of these facts. He informed me that he was not aware of such a claim being filed on his behalf; that he did not file such a claim; and that he had not authorized any one to act on his behalf. The AAA informed me that there was nothing in their records to indicate that Martin Raake had filed a claim for arbitration with them, and that they had no record of Martin Raake giving Russell L. Forkey authorization to represent him. They arranged a telephone conference with a panel of arbitrators who informed me that at the arbitration hearing I could present my case and that they, the arbitrators, would decide if a valid arbitration request had been made in accordance with the

provisions of the arbitration agreement. I replied that this procedure was unsatisfactory to me inasmuch as they would be ruling on a matter in which they had personal interest, namely the fees they would receive for their services.

In the case of First Options, Inc. v. Manuel Kaplan, U.S. Supreme Court Case No. 94-560, Kaplan raised the question of arbitrability. The decision of the U.S. Supreme Court states, "If . . . . the parties did not agree to submit the arbitrability question to arbitration, then the Court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely independently. These two questions flow inexorably from the fact that arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes that the parties agreed to submit to arbitration."

STATEMENT OF THE COURSE OF PROCEEDINGS AND THE DISPOSITION OF THE CASE

In 1986 I was served with a verified complaint filed by Lloyd and Martin Raake, two brothers whose stock accounts I managed. The complaint alleged 98 instances of fraud, deceit, and misrepresentations on my part, as well as not following instructions they gave me. I had documentary evidence to prove that many of the allegations were false. I went to a lawyer with my documents to handle the case for me. He advised me to claim my right to arbitrate the claims against me because I had strong grounds to make a counterclaim before an arbitration tribunal. I sought the Court to order the case to arbitration, which the Court did. The Raake brothers through their attorney then appealed the District Court's decision to the 11th Circuit Court of Appeals claiming that because they claimed I had violated the Security Act of 1933, they

were exempt from the Court order to go to arbitration. Their claim was fraudulent because the Securities Act of 1933 dealt only with the issuance of new securities while *every* security I purchased for the Raake brothers was an existing registered security listed on The New York Stock Exchange. The Court of Appeals dismissed the Raake appeal.

Some time later I received a notice from the AAA that the Raake brothers had requested arbitration of their claims against me. The claim was not signed by either of the Raake brothers. I called Martin Raake and advised him of the arbitration request attributed to him. His reply to me was that he was unaware that such an event took place. He stated that he had not initiated the request for arbitration, nor had he authorized anyone to act on his behalf in this matter.

I called the AAA and advised them of what Martin Raake told me. I also sent them a $300.00 deposit on my fee for a counterclaim of $100,000.00, the total fee being $1,500.00. There was a deadline for filing a counterclaim. The deposit I sent them was to insure my right to file my counterclaim. I informed the AAA that my participation in the processing of the arbitration was solely to expedite the procedure, and was conditioned upon my receiving a signed notice by the Raake brothers that they were instituting arbitration proceedings against me, or that they had authorized Russell L. Forkey to represent them in this matter. I argued that had I won my counterclaim, there was no legal basis for me to collect the award since the Raake brothers could rightfully claim they had not initiated any arbitration proceedings against me, nor had they given me any notice of an authorized representative to do so, as required by the rules. Thus even if I won an award I could not legally collect it.

What is more I would be out the $1,500.00 fee I would have paid to file my counterclaim.

Some time later I was advised of a scheduled arbitration hearing in Florida. One of the chosen arbitrators informed me that the arbitration panel would decide if the arbitration proceedings were in accordance with the rules. I replied that I could not accept their decision on the matter since there was no valid request for an arbitration by the Raake brothers or by a representative authorized by them in accordance with the rules of the AAA.

The panel met without my presence, and awarded nothing to Lloyd Raake and $10,000.00 to Martin Raake.

Russell Forkey then went into the District Court to challenge the legality of the "nothing" award to Lloyd Raake, claiming that under Florida law he was entitled to recover all the losses he incurred even though the value of his account increased 187% from the total of what he gave me to invest for him. I replied that even though I did not recognize the legal authority of the arbitration panel, they acted properly in the case of Lloyd Raake. He could not demonstrate that he lost as much as one penny as a result of transactions I made for him in Florida. At all times during our relationship he was a resident of Ohio. Nevertheless he and Martin Raake swore that at all times he was a resident of the State of Florida.

In October, 1991, the case was reassigned to Judge Donald Graham. Judge Graham referred the case to Magistrate Turnoff. He recommended that Lloyd Raake be awarded $84,825.00 plus interest from 1985 as well as $32,662.00 for attorneys' fees. He stated that the arbitrators' "nothing" award be overthrown because it was "arbitrary and capricious."

Judge Graham accepted the recommendation of the magistrate, and awarded Lloyd Raake over $150,000.00 in damages and issued a judgment against me for this large amount of money. I appealed the decision of the district court. The Court of Appeals arranged for a hearing. I was given fifteen minutes to present my case. I mentioned that I did not recognize the validity of the arbitration proceedings. I felt I had an extraordinarily sound case in arguing against the judgment awarded Lloyd Raake. There was proof in the record that he was at all times a resident of Ohio. It was impossible for him to demonstrate that he suffered as much as one penny of losses based upon stocks bought and sold for him in Florida. Therefore, the arbitrators acted 100% in conformance with Florida law. Because of the extraordinary high award given to Lloyd Raake by the District Court, I had to use all my time to defeat the award to Lloyd Raake.

I could not afford to spend my time arguing against the validity of the arbitration proceedings when I felt strongly that the Court would uphold the panel's "nothing" award to Lloyd Raake.

On the basis that both Martin Raake and I were residents of Florida, Russell Forkey instituted an action in a civil court of Florida to collect the arbitrators' award to Martin Raake. I argued that the arbitration was not valid because Martin Raake never initiated arbitration proceedings against me, and that there is no record in the proceedings that he ever authorized Russell Forkey to represent him in such proceedings. In fact there is no record of such proceedings in the AAA. All attempts to examine the record of the proceedings have proved futile. A day was set for a hearing in the state's Civil Court. On the day of the hearing Russell Forkey asked for the case to be dismissed without prejudice. I objected to that

motion. To this day I have not had a response from the Civil Court on Mr. Forkey's motion or my objection to his motion.

Mr. Forkey then initiated an action in Judge Graham's district court for a judgment against me which Judge Graham granted him without holding a hearing on the matter. I filed an appeal against his judgment and offered on three different occasions to deposit with the Court clerk any amount he would consider adequate to satisfy the judgment he issued against me. He denied my motions. Russell Forkey moved this Court to dismiss my appeal which was timley filed. The Court granted Mr. Forkey's motion to dismiss my appeal. Previously, I had moved the Court for a stay of the judgment in accordance with the provisions of FRAP 8(a) and (b). The motion was denied because it was declared "moot." The Court of Appeals' panel gave no reason for denying me my right to appeal.

This request for a hearing En-Banc, is for the purpose of permitting me to carry my quest for justice to the limits provided by law.

STATEMENT OF THE FACTS TO ARGUMENT THE ISSUES

1. It is a fact proven by various court documents that Russell L. Forkey prepares fictitious complaints based upon conversations between parties and then induces his clients to swear to their truthfulness with the inducement that they will profit by their action. He then proposes a settlement with stock brokers that would be less costly to them than the legal expenses they would expend to win their cases. I believe this is a form of "extortion."

2. It is a fact that Martin Raake did not submit to me a claim for arbitration as required by the rules of the AAA.

3. It is a fact that Martin Raake did not inform me that Russell L. Forkey was his representative for arbitration proceedings against me.

4. It is a fact that the AAA has no record of Martin Raake making an arbitration request or authorizing Russell Forkey to be his representative.

5. The AAA could not provide a record of the alleged arbitration proceedings after several attempts to see them for use in preparation of an appeal.

ARGUMENT AND AUTHORITIES

The pertinent part of section 6 of the AAA rule for initiating an arbitration proceeding is as follows: Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

a. The initiating party shall give written notice to the other party of its intention to arbitrate (demand).

No such notice was given to me or to the AAA by Martin Raake, or by his late brother Lloyd Raake.

It may be argued that such notice could be given by a duly appointed representative. I accept this argument.

Section 22 of the AAA rules regarding Representation states: "Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear When such a representative initiates an arbitration, or responds for a party, notice is deemed to have been given."

Here "*such a representative*" refers to a representative whose name and address has been given to the other party and the AAA.

The facts of this case—all of which are in the record of the proceedings—support my contention that:

1. Martin Raake is not a legitimate plaintiff.

2. There were no legitimate arbitration proceedings.

3. There were no legitimate arbitrators.

4. There was no legitimate arbitration decision.

5. Had I won my counterclaim before the alleged arbitration panel, Martin Raake could avoid liability for any award against him for the same reasons that I have not recognized the arbitration award.

These facts and arguments show that I had a legitimate basis for questioning the legitimacy of the arbitration proceedings. My interpretation of the Supreme Court decision in the First Options v. Kaplan case, which I have previously quoted, is applicable to this case. It was for a Court to decide whether the arbitration was in accordance with the contract to arbitrate. Had a Court ruled prior to the alleged arbitration hearing that Martin Raake was a legitimate plaintiff, then if I won my conterclaim I would have had a court decision to support my claim.

The prime beneficiary of the judgment issued against me is Russell L. Forkey. He has been engaged in the criminal activity of preparing fictitious complaints against brokers and inducing his clients to swear to their truthfulness, making those clients partners to his criminal activities. He knows that the courts are so overwhelmed with cases that require attention that the judicial system cannot cope with the many cases involving perjury each day. It may be difficult for the Court to punish Russell L. Forkey for his criminal activities within the court system but it is not difficult for the courts to deprive him of the benefits of his criminal activities.

CONCLUSION

Based upon the facts and arguments presented, the Court of Appeals should vacate the order to dismiss my appeal of the judgment issued against me by the District Court.

/s/ Sam Skurnick
300 S.E. 5th Avenue #6030
Boca Raton, FL 33432
(561) 391-3255

[Certificate of Service Omitted]

(2)

Supreme Court, U.S.
FILED
MAY 27 1999
CLERK

No. 98-1680

In The Supreme Court of the United States

OCTOBER TERM, 1998

SAM SKURNICK,

Petitioner,

v.

MARTIN RAAKE,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Martin Raake
Respondent, filing pro se
5230 N. E. 17th Terrace
Ft. Lauderdale, FL 33334
(954) 771-0358

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

JIAP

LIST OF THE PARTIES

The caption of the case contains the names of all of the parties.

TABLE OF CONTENTS

Parties to the Proceeding..... i

Table of Contents..... ii

Statement of the Case..... 1

Reasons for Denying the Writ..... 3

Conclusion..... 4

STATEMENT OF THE CASE

The Appellee (hereinafter referred to as Raake) originally filed a multi-count complaint against the Appellant (hereinafter referred to as Skurnick) in the United States District Court for the Southern District of Florida, case no: 86-6772-CIV, alleging violations of Section 12(2) of the Securities Act, Section 10(b) of the Exchange Act, Florida Statutes 517.12 and 517.301, breach of fiduciary duties, fraud and deceit, and negligence. This complaint was filed in September of 1986.

In response to the complaint, one of the pleadings filed on behalf of Skurnick was a Motion to Stay Action Pending Arbitration. The District Court granted this motion on December 30, 1997. An appeal of this order was taken by the Raake and was ultimately dismissed by the 11th Circuit Court of Appeals in a Judgment dated June 23, 1989.

Upon the dismissal of the appeal referenced above, Raake filed a demand for arbitration with the American Arbitration Association (hereinafter referred to as "AAA") on or about September 27, 1989. In this demand, Raake, in describing the nature of the dispute, attached a copy of the original verified complaint filed in the District Court and also made an additional claim against Skurnick for violation of the Ohio securities laws. The attorney representing Raake executed this demand for arbitration.

During the preliminary proceedings in the arbitration process, Skurnick raised various objections with the AAA, which the AAA either addressed by providing a written decision prior to the hearing date or by indicating that the issue could be raised and addressed at the hearing itself. The record, in arbitration, clearly reflects that Skurnick actively and extensively participated in the pre-hearing process.

On September 18 through 20, 1990, the AAA conducted an arbitration hearing. However, for some unexplained reason, Skurnick decided not to attend the final

hearing thereby effectively precluding himself from resolving any open procedural issues and presenting a defense to the claim of Raake.

On October 11, 1990, the arbitration award was forwarded to the parties. It provided in relevant part:

> The Claimant, MARTIN RAAKE, shall recover from Respondent, SAM SKURNICK, the sum of TEN THOUSAND DOLLARS AND NO CENTS ($10,000).

Thereafter, Raake filed a motion, in the District Court, seeking to Reopen Case and to Confirm Arbitration Award in Part and to Vacate Arbitration Award in Part. This motion was granted and the District Court entered judgment against Skurnick. Skurnick then filed an appeal, of this judgment, with the 11th Circuit Court of Appeals, Case Nos: 94-4283 and 94-4504. As part of this appeal, Skurnick made the same arguments relating to the underlying facts as he is now making to this Court. For a totally separate legal reason, the 11th Circuit vacated the judgment of the District Court and reinstated the original arbitration award. The decision of the court and the mandate are contained in the appendix.

Upon receiving the mandate, Raake filed a motion with the district court seeking to have the court comply with the mandate to reduced the original arbitration to a judgment. This motion was granted based on the mandate and judgment was entered against Skurnick. The judgment is included in the appendix.

From this judgment Skurnick filed another appeal with the 11th Circuit Court of Appeals, Case No: 98-4685. This appeal, in effect, was asking the court of appeals to review a judgment that was entered in conformance with an earlier mandate of the same court.

In response to this notice of appeal, Raake filed a motion to dismiss the same based upon the fact that the final

judgment being appealed was nothing more than a judgment based upon an earlier mandate of the same court. A copy of this motion is included in the appendix. This motion was granted by the court of appeals on October 20, 1998. Thereafter, Skurnick filed a Suggestion of Hearing En Banc, which was denied by the court of appeals on January 19, 1999. It is this most recent action, by the court of appeals, which is the subject of this appeal.

REASONS FOR DENYING THE WRIT

Skurnick has presented a confusing and misleading Statement of the Case. As is referenced in Raake's Statement of the Case, this entire appeal is predicated upon Skurnick's appeal of a Final Judgment entered by the District Court which was based upon a mandate issued by the 11th Circuit Court of Appeals in case nos: 94-4283 and 94-4504. When the 11th Circuit Court of Appeals was advised that this was the basis of Skurnick's appeal, the Court dismissed the same.

At both the District Court and appellant level, Skurnick was given the opportunity and did in fact respond in writing to Raake's Motion for Order and Judgment to Comply with Mandate and Raake's Motion to Dismiss the Appeal. Therefore, for Skurnick to imply that he did not fully and completely present his position to both courts is misleading.

Skurnick's other issue apparently concerns the fact that Skurnick did not participate in the suit. It is impossible for Raake to deal with this issue as Skurnick has been raising this issue since the arbitration matter was initiated. At each and every level referenced in Raake's Statement of the Case, either the arbitration panel, the District Court or the Appellant Court considered this argument and rejected the same.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,
Martin Raake
Respondent, filing pro se
5230 N.E. 17th Terrace
Ft. Lauderdale, Fl 33334
(954) 771-0358
May 27, 1999

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 94-4283 & 94-4504

D.C. Docket No. 86-6772-CIV-GRAHAM

David Wolfe, as Administrator for the Estate of Lloyd Raake and Martin Raake, Lloyd Raake, Martin Raake,

Plaintiffs-Appellees,

v.

Sam Skurnick,

Defendant-Appellant.

Appeals from the United States District Court for the Southern District of Florida

(December 7, 1995)

Before ANDERSON and BARKETT, Circuit Judges, and YOUNG*, Senior District Judge.

*Honorable George C. Young, Senior U.S. District Judge for the Middle District of Florida, sitting by designation.

PER CURIAM:

The instant case is an appeal from the district court's vacation in part of an arbitration award. The arbitrators awarded Martin Raake $10,000 damages for appellant's violation of Florida Statute § 517.12, but awarded Lloyd Raake no damages. The district court, adopting the magistrate judge's report and recommendation, vacated the arbitration award in part and granted damages to Lloyd Raake (or his estate) in the amount of $84,824.77, plus interest, and awarded damages to Martin Raake in the amount of $9,436.16, plus interest. Attorney fees were also awarded in favor of plaintiffs-appellees.

We conclude that this case must be reversed. This case is controlled by Brown v. Rauscher Pierce and Refsnes, Inc., 994 F.2d 775 (11th Cir. 1993), rather than by Ainsworth v. Skurnick, 960 F.2d 939 (11th Cir. 1992). As in Brown, at the time of the arbitration award in this case, the Florida law relating to the damages under this statute was not established. As stated in Brown:

> [A]t the time the [arbitration] Panel rendered its decision, Ainsworth [960 F.2d 939 (11th Cir. 1992)] had not yet been decided. As there was no definitive interpretation of the statute, the Panel's interpretation was not wholly unfounded. Thus, we cannot say that the Panel's award was arbitrary and capricious.

994 F.2d at 781. In this case, the final arbitration award was entered on November 8, 1990. The Florida law was established at the earliest in Skurnick v. Ainsworth, 591 So.2d 904 (Fla. 1991). That opinion issued on September 12, 1991, and rehearing was denied on November 14, 1991. The opinion answered a question certified by this court, which answer was then embodied in our opinion in Ainsworth v. Skurnick, 960 F.2d 939 (11th Cir. 1992).

Accordingly, this case is in precisely the same posture as was Brown, and is controlled by it. Therefore, the judgment of the district court is reversed, including its award of attorney's fees, and this case is remanded to the district court with instructions to reinstate the award of the arbitrators.[1]

REVERSED AND REMANDED.

---

[1]Appellant's other arguments are without merit. Appellant argues that he was not given notice, as required by Rule 22 of the Securities Arbitration Rules of the American Arbitration Association, that the Raakes would be represented by counsel at the arbitration hearings. However, Rule 22 states that the notice requirement is satisfied when the representative "initiates an arbitration or responds for a party." In this case the magistrate judge found that attorneys for the Raakes filed the Demand for Arbitration. In doing so, they satisfied the notice requirement of Rule 22

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 94-4283 & 94-4504

D.C. Docket No. 86-6772-CIV-GRAHAM

David Wolfe, as Administrator for the Estate of Lloyd Raake and Martin Raake, Lloyd Raake, Martin Raake,

Plaintiffs-Appellees,

v.

Sam Skurnick,

Defendant-Appellant.

Appeals from the United States District Court for the Southern District of Florida

Before ANDERSON and BARKETT, Circuit Judges, and YOUNG*, Senior District Judge.

JUDGMENT

These causes came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and were argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in these causes be and the same is hereby REVERSED; and that these causes be and the same are hereby REMANDED to said District Court for further proceedings in accordance with the opinion of this Court;

It is further ordered that plaintiffs-appellees pay defendant-appellant the costs on appeal to be taxed by the Clerk of the Court.

*Honorable George C. Young, Senior U.S. District Judge for the Middle District of Florida, sitting by designation.

Entered: December 7, 1995
For the Court: Miguel J. Cortez, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 3/8/96

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARTIN RAAKE, ET AL.,
Plaintiffs,

vs.

Case No.: CL 86-6772-CIV-GRAHAM

SAM SKURNICK,
Defendant.

MOTION FOR ORDER AND JUDGMENT TO COMPLY WITH MANDATE AND MEMORANDUM OF LAW IN SUPPORT THEREOF

The Plaintiff, Martin Raake, moves this Court for the entry of an Order confirming the subject arbitration award and entering Final Judgment thereon. In support of this Motion, the Plaintiff would allege as follows:

1. In the unpublished opinion issued by the Eleventh Circuit Court of Appeals, in this matter, the Appeals Court reversed and remanded this matter to the District Court as referenced by the enclosed opinion.

2. As reflected in the enclosure, the Eleventh Circuit Court of Appeals specifically directed the Court to reinstate the subject arbitration award. In that regard, the Plaintiff moves this Court for an Order reinstating and confirming the subject arbitration award and entering a Final Judgment thereon in accordance with the affidavit filed in support of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by US Mail, this 14th day of May, 1997 to Sam Skurnick, Pro Se, 300 5th Avenue, No. 6030, Boca Raton, FL 33432; Steven R. Berger, Berger & Chafetz, Suite 1500, NationsBank Building, 9350 South Dixie Highway, Miami, FL 33156.

Russell L. Forkey, PA
2888 East Oakland Park Blvd.
Ft. Lauderdale, FL 33306
FBN: 146757
(305) 568-4441

/s/
Russell L. Forkey, Esquire

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARTIN RAAKE, ET AL.,
Plaintiffs,

vs.

Case No.: CL 86-6772-CIV-GRAHAM

SAM SKURNICK,
Defendant.

This Cause came before the Court upon Plaintiff's, Martin Raake, Motion for Order and Judgment, filed May 19, 1997.

The Court has reviewed the Motion, the pertinent portions of the record, and is otherwise fully advised of the premises.

On June 29, 1993, this court entered and Order Affirming Magistrate's Report and Recommendation (D.E. 121) and vacated the arbitration award in part and granted damages to Lloyd Raake (or his estate) in the amount of $84,824.77, plus interest, and awarded damages to Martin Raake in the amount of $9,436.26, plus interest. This Court also granted Plaintiffs attorney's fees.

The Eleventh Circuit relied on Brown v. Rauscher Peirce and Refsnes, Inc., 994 F.2d 775 (11th Cir. 1993) and reversed this Court's Order Affirming Magistrates Report And Recommendation (D.E. 121). The Eleventh Circuit remanded the case to this Court with instructions to reinstate the award of the arbitrators.

In light of the above, it is

ORDERED AND ADJUDGED that Defendant's Motion for Dismissal of Motion for Order and Judgment filed May 29, 1997 is hereby DENIED. It is further,

ORDERED AND ADJUDGED that plaintiff's, Martin Raake, Motion for Order and Judgment filed May 19, 1997 is GRANTED. It is further

ORDERED AND ADJUDGED that the Clerk of Court shall REINSTATE the Award of the Arbitrators and AFFIRM the decision of the arbitration panel.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 1998.

/s/
Donald L. Graham
United States District Judge

cc: Hon. William C. Turnoff
All counsel of record

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARTIN RAAKE, ET AL.,
Plaintiffs,

vs.

Case No.: CL 86-6772-CIV-GRAHAM

SAM SKURNICK,
Defendant.

FINAL JUDGMENT

This cause came on for consideration before the Court upon Plaintiff's Motion for Order and Judgment (D.E. 176), filed May 19, 1997.

The Court has considered the issues, the pertinent portions of the record, and is otherwise fully advised in the premises. Therefore, it is

Ordered and Adjudged that Plaintiff is awarded a judgment against Defendant Sam Skurnick in the total amount of $25,525.74, which includes:

(1) The subject award of $10,000.00;
(2) Administrative fees and expenses of the American Arbitration Association totaling $3,000.00;
(3) The award includes $1,800.00 for fees previously paid by the Plaintiff;
(4) The award further includes interest on the balance of $14,800.00, from October 2, 1990 to May 6, 1997, in the amount of $10,725.74.

Done and Ordered in Chambers at Miami, Florida, this 23rd day of March, 1998

/s/
Donald L. Graham
United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARTIN RAAKE, ET AL.,
Plaintiffs,

vs.

Case No.: CL 86-6772-CIV-GRAHAM

SAM SKURNICK,
Defendant.

NOTICE OF APPEAL

Defendant, Sam Skurnick, acting Pro Se, hereby notifies the court that he will appeal the "Final Judgment" entered by this court in the above case on March 23, 1998.

The fee of $105.00 is enclosed to the Clerk of the Court.

/s/
Sam Skurnick, Defendant
300 S. E. 5th Avenue
Boca Raton, Florida 33432
(561) 391-3255

I hereby certify that a copy of the above has been sent by mail to Russell L. Forkey, PA at 2888 E. Oakland Park Blvd., Ft. Lauderdale, FL 33306 on April 20, 1998

ELEVENTH CIRCUIT COURT OF APPEALS

MARTIN RAAKE, ET AL.,
Plaintiffs,

vs. - Case No. 98-4685
LTCase No.: CL 86-6772-GRAHAM

SAM SKURNICK,
Defendant.

MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW IN SUPPORT THEREOF

The Appellee, Martin Raake, hereby moves this Court for an Order dismissing the subject appeal. In support of his Motion, the Appellee would allege as follows:

ARGUMENT

The Appellee, hereby files this Motion to Dismiss pursuant to Rule 27 of the Rules of Appellant Procedure and Rule 27-1 of the United States Court of Appeals, Eleventh Circuit. This Motion is predicated upon the fact that the final judgment appealed from is simply the trial court implementation of a mandate issued by this Court in a previous proceeding.

On December 7, 1995, this Court entered the enclosed Order reversing various decisions by the District Court and directing that the original arbitration award be reinstated. A copy of said Order is attached hereto as Exhibit No. 1.

Based upon this Order, the Appellee filed a request, with the District Court, to reinstate the original arbitration award. This request was granted by the entry of the Order appealed from herein.

The entry of the Final Judgment herein was basically nothing more than a ministerial act directed by this court in reinstating the original arbitration award and entering judgment thereon.

Wherefore, the Appellee moves this Court for an Order dismissing the subject appeal.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by US Mail this 5th day of June, 1998 to:

Sam Skurnick, Pro Se
300 S.E. 5th Ave., No. 6030
Boca Raton, FL 33432

Russell L. Forkey, PA
2888 E. Oakland Park Blvd.
Ft. Lauderdale, FL 33306
FBN: 146757
(305) 568-4441

/s/
Russell L. Forkey, Esquire

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-04658

Filed: 10/20/98

Lloyd E. Raake,
Martin Raake,
Plaintiffs-Appellees,

v.

Sam Skurnick,
Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of Florida

Before: Anderson, Edmondson and Dubina, Circuit judges.

By the Court:

Appellee Martin Raake's Motion to Dismiss this appeal is GRANTED.

Appellant's Motion for stay of judgment pending appeal is DENIED AS MOOT.

Supreme Court, U.S.
FILED
JUN 8 1999
CLERK

(3)

No. 98-1680

IN THE
Supreme Court of the United States

SAM SKURNICK,
Petitioner,

v.

MARTIN RAAKE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONER

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, #6030
Boca Raton, Florida 33432
(561) 391-3255

June 8, 1999

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IN THE

Supreme Court of the United States

No. 98-1680

SAM SKURNICK,

Petitioner,

v.

MARTIN RAAKE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONER

The theme of Raake's argument in the district court, the court of appeals, and in this court is that the district court merely conformed with the mandate of the 11th Circuit Court of Appeals, and that for this reason Skurnick's appeal in the 11th Circuit Court of Appeals in Case No. 98-4685 had no merit and should be dismissed. The statement that the district court merely conformed to the mandate of the Court of Appeals is false.

On page 2, Raake quotes the arbitration award stating that he was awarded "the sum of Ten Thousand Dollars And No Cents ($10,000)". The district court awarded Raake $25,525.74 which not only included the

$10,000 awarded to Raake plus interest but the $3,000 awarded to the American Arbitration Association plus other items not involved in Raake's suit which was merely for the $10,000 awarded him by the arbitrators. Thus the award to Raake did not conform to the mandate of the 11th Circuit Court of Appeals.

On this basis alone, besides other reasons, which included a Supreme Court decision which affected my case, I had a legitimate reason for filing an appeal of the district court's judgment. I paid the required fee and filed a timely notice of appeal.

By dismissing my appeal before I presented my brief, the 11th Circuit Court of Appeals violated my constitutional right to use the court system to seek redress for a grievance.

The district court ordered contempt proceedings against me and referred the case to the same magistrate who recommended to him that he vacate the nothing award of the arbitrators to Lloyd Raake because it was arbitrary and capricious. He informed me that he would recommend severe sanctions against me if I did not pay Martin Raake within ten days, even though I was ready then and there to deposit the full amount of the judgment with the Court.

To eliminate the contempt proceedings against me I offered Raake $20,000, which Raake accepted. His attorney, Russell L. Forkey, informed me that this deal was conditioned on my rescinding my request for a writ. This I refused to do. The form which he submitted to me is on page 1a of this brief.

REASONS FOR GRANTING THE WRIT

Because I had evidence of severe perjury for profit, and a lawyer's inducing a client to commit 97 counts of perjury, I felt I had an opportunity to render a great public service on a problem confronting the nation, namely excessive litigation based upon fraudulent claims. At great personal and financial sacrifice I have pursued my aims over many years.

My objective solely is to render the public a service which I felt was sorely needed, and which I was in a position to accomplish. The best interests of the government requires that I be granted the writ.

Respectfully submitted,

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, # 6030
Boca Raton, Florida 33432
(561) 391-3255

June 8, 1999

APPENDIX

APPENDIX

UNITED STATES SUPREME COURT

Case No.: 98-1680

SAM SKURNICK,

Petitioner,

VS.

MARTIN RAAKE,

Respondent.

NOTICE OF VOLUNTARY DISMISSAL OF PETITION FOR CERTIORARI WITH PREJUDICE

The Petitioner, Sam Skurnick, hereby files his Voluntary Dismissal of Petition for Writ of Certiorari With Prejudice regarding the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this — day of May, 1999 to:

Mr. Martin Raake
5230 N.E. 17th Terrace
Ft. Lauderdale, FL 33334

SAM SKURNICK
300 S.E. 5th Ave. #6030
Boca Raton, FL 33432

SAM SKURNICK